

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6985 OF 2007

The General Secretary,
Shetkari Shetmajoor Panchayat
(Mah.)

..Petitioner

Vs.

The Superintendent, Falotpadan
Adhikari and ors.

..Respondents

Mr. G.S. Godbole with Ms. Manjiri S. Parasnis for
petitioner.

CORAM: B.H. MARLAPALLE, J.

Date : December 06, 2007.

P.C.:

1. Heard Mr. Gobdole the learned counsel for the petitioner-Union. The said Union had filed Complaint (ULP) No. 80 of 1994 for and on behalf of 21 daily rated plantation labourers engaged under respondent no.3 for seeking the benefit of permanency and consequential monetary benefits. The complaint was filed under Section 28 read with Items 5, 6, 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade

Unions & Prevention of Unfair Labour Practices Act, 1971 (for short the Act). It was the contention of the Union that the 21 labourers whose names were mentioned in the list annexed to the complaint had put in five years to twelve years of service and, therefore, under the Industrial Employment (Standing Orders) Act, 1946 and the Model Standing Orders framed thereunder they were entitled to be made permanent as soon as in any year of such service they had completed 240 days of work. The complaint was opposed by filing reply by the respondents who are the Officers of the Horticulture Department - Government of Maharashtra. It was stated in the Written Statement that the said 21 workmen were being engaged purely on temporary basis and in the plantation season and in any case the available sanctioned posts - Group "D" category were already filled in by the regular selection. It was also pointed out that as none of them had completed 240 days of work in a period of continuous five years, they were also not eligible for the benefit of Kalelkar Award. In addition to the documentary evidence, both the sides had adduced oral evidence as well. The Industrial Court, after

considering the rival submissions as well as the evidence placed on record, held that the benefit of regularisation/ permanency in the State employment is available only to those who are appointed as per the service Rules and merely because the daily rated temporaries/casuals had worked for years together, such a benefit cannot be granted to them. In support of this view the Industrial Court has relied upon the Constitution Bench decision in the case of Secretary, State of Karnataka and ors. vs. Umadevi (3) and ors. [(2006) 4 SCC 1]. Consequently, the complaint came to be dismissed as per the Judgment and Order dated 27/4/2007 and hence this petition.

2. Items 5, 6, 9 and 10 of Schedule IV of the Act read as under:-

5. To show favouritism or partiality to one set of workers, regardless of merits.

6. To employ employees as "badlis", casuals or temporaries and to continue them as

such for years, with the object of depriving them of the status and privileges of permanent employees.

9. Failure to implement award, settlement or agreement.

10. To indulge in act of force or violence.

. Admittedly, there was no case made out under Item 10 of Schedule IV of the Act before the Industrial Court. In support of the contentions that the respondents had engaged in unfair labour practice under Item 5, it was submitted that the respondents for the same set of duties i.e. plantation had engaged permanent employees and for the same work casuals/temporaries were being engaged and were not being paid the same salary. Thus, there was favouritism or partiality to one set of workers, regardless of merits. So far as Item 6 is concerned, it was submitted that 21 workers being continued as temporaries or casuals for years together with the

object of depriving them of the status and privileges of permanent employees and, therefore, the respondents were guilty of unfair labour practice. So far as Item 9 is concerned, it was submitted that the provisions of Model Standing Orders entitled these 21 workers for permanency as soon as each of them or any one of them had completed 240 days of work in any year and thus, there was a breach of the provisions of Model Standing Orders. In his evidence, the Plantation Officer deposed before the Industrial Court that the permanent posts in the Plantation Department were already filled in and some of these 21 workers for whom the complaint was filed were being engaged purely on temporary basis and in any case there were no permanent sanctioned posts available for engaging on regular basis. He also pointed out that none of the 21 workers had completed 240 days of work in a set of five years preceding the date of filing of the complaint and, therefore, they were not entitled for the benefit of the Kalelkar Award as well.

3. Merely because the temporaries/casuals were engaged for plantation work which was also being done

by a regularly appointed employees of the Horticulture Department, the complainant - Union could not claim parity in wages/salary. Similar issue arose before the Apex Court recently in the case of Marathwada Agricultural University & Ors. vs. Marathwada Krishi Vidyapith, M.S.K.S. and ors. [AIR 2007 SC 2969] from the decision of the Division Bench of this court (Aurangabad Bench). The Division Bench of this court had held that denial of the appropriate wages to the daily rated workers amounted to exploitation of labour and, therefore, it directed that the daily rated workers be paid wages with effect from 1st May, 1988 at the rate of basic pay i.e. at the minimum of the pay scale plus dearness allowance divided by 26, whereas the University was paying the wages at the rates prescribed under the Minimum Wages Act, 1948 and as applicable to the agricultural sector. Their Lordships referred to the earlier judgments in the case of Umadevi and Dharwad District PWD Literate Daily Wage Employees Association vs. State of Karnataka [AIR 1990 SC 883] and set aside the judgment of this Court. In para 7 the Supreme Court observed thus,

". But the question really is not of regularization. The more important factor is that the Committee should hear the view of the parties and formulate a scheme relating to the amount to be paid to the workman without them being regularised. It shall also examine whether there is any necessity for parity of the wages, taking into account the norms relating to the method of requirement, the seasonal nature of the employment, if any."

The State Government was directed to form the Committee whose names were mentioned and the Committee's report shall be acted upon by the State Government after obtaining the view of the University and after giving all concerned parties an opportunity of stating their views. On the face of this well settled legal position there could be unfair labour practice within the meaning of Item 5 of Schedule IV of the Act in the instant case.

4. So far as Item 6 is concerned, it is well settled that in the absence of sanctioned posts in a particular Government department, continuation of daily rated casuals/temporaries by itself is not an act of unfair labour practice within the meaning of Item 6 of Schedule IV of the Act. In support of this view, reliance may be placed on the decision of this court in the case of Punjabrao Krishi Vidyapeeth, Akola vs. General Secretary, Krishi Vidyapeeth Kamgar Union and ors. [1994 I CLR 913]. The same view has been confirmed by the Supreme Court in the case of Mahatma Phule Agricultural University and ors. vs. Nasik Zilla Sheth Kamgar Union and ors. [AIR 2001 SC 3228].

5. Now coming to the last Item i.e. Item 9 of Schedule IV of the Act, Mr. Godbole submitted that the Model Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946 are applicable to 21 workers and, therefore, any one of them who had put in 240 days of work any year of their service, the benefit of permanency/regularisation must be extended

to them. It is not disputed that 21 casuals/temporaries were engaged by the respondents who are part of the department of Horticulture, Government of Maharashtra and the service conditions of the Government employees are governed by the Maharashtra Civil Services Rules framed under Article 309 of the Constitution, it would be fallacious to state that when such service Rules are applicable to the Government employees, the casuals/temporaries who are paid from the State funds will be covered by the provisions of the Model Standing Orders which are, in fact, applicable to the Industrial Establishments. Mr.Godbole submitted that the Horticulture Department is an Industrial Establishment. The Horticulture Department may fall within the meaning of the term "industry" as defined under the Industrial Disputes Act, 1947, but that by itself will not mean that the Horticulture Department is an Industrial Establishment covered under the Industrial Employment (Standing Orders) Act, 1946. No casual/temporary daily rated worker engaged in the Government department can claim permanency on the basis of the applicability of the Model Standing Orders.

6. Even otherwise, let us see the finding recorded by the Industrial Court on 240 days of work. On assessment of evidence, the Industrial Court on this issue recorded a finding in para 6 which could be reproduced in the following tabular form:-

Name of the Worker -----	Year ----	No.of days -----
Laxmi Shivaji Pawar	1996	259
	1997	243
Shanta Shivaji Shinde	1986	276 1/2
Rangubai Sopan Dongare	1985	261
	1988	256
	1996	245
	1997	248 1/2
Laxmi Dattu Rangor	1983	278
	1996	281
	1997	267
Noorjaha Papa Mulani	1985	277
	1996	271
Bhamabai Ramchandra Patil	1984	258
	1985	295
	1987	272 1/2

	1988	281
	1996	277
	1997	263
Tanaji Mane	1987	272 1/2
	1988	277
	1989	271
	1990	249 1/2
	1993	284
	1994	272
Narayan Dnyanoba Kadam	1987	277
	1989	286
	1993	303
	1995	248
	1996	248
Chabubai Dnyandev Kadam	1987	248
	1988	295 1/2
	1996	254
Bali Bhanudas Mane	1994	277 1/2
Nilabai Maruti Kadam	1988	272 1/2
	1996	262
Hirabai Krushna Pawar	1996	280
Dyandeo Mahadev Kadam	1984	259
	1985	299
	1987	277
	1988	244 1/2
	1995	244
	1996	322
	1997	278 1/2
Sarubai Shivaji Khendkar	1996	269 1/2
Rakhambai Parshuram Kurnurkar	1983	243 1/2
	1984	253
	1985	282
	1987	317
	1988	312
	1996	248
	1997	248 1/2

Sarubai Mohan Kamble	1986	283
	1988	282
	1996	280
	1997	250 1/2

. From the above chart it is clear that none of the employees had put in 240 days or more work in a period of continuous five years preceding the date on which the complaint was filed so as to enable them to claim the benefits under the Kalelkar Award. The respondents were, therefore, right in their contentions that leave alone the benefit of permanency, none of the 21 workers had qualified themselves for the benefit of the Kalelkar Award.

7. The Industrial Court relied upon the Constitution Bench judgment in the case of Umadevi (Supra). Mr. Godbole the learned counsel referred to the subsequent decision in the case of Mineral Exploration Corporation Employees' Union vs. Mineral Exploration Corporation Ltd. and anr. [(2006) 6 SCC 310] and prayed for the remand of the complaint for being considered by the Industrial Court on the basis of the law laid down in Umadevi's case so that at

least some of them could be found to be eligible and more particularly he referred to the observations in para 53 in Umadevi's case. The observations in para 53 pertain to the appointments of duly qualified persons made in sanctioned vacant posts and such appointees having been continued to work for 10 years or more. None of the 21 casual/temporary workers fall in this category and, therefore, there is no question of remanding the complaint for fresh trial. As noted earlier, the sole basis of the complaint was the applicability of the Model Standing Orders and in my considered view, as noted earlier, no casual/temporary labour appointed in a Government department can place reliance on the Model Standing Orders and claim permanency when the appointment in the Government department on regular basis are required to be made as per the Maharashtra Civil Services Rules.

8. Hence, there is no case made out to cause interference in the view taken by the Industrial Court under the supervisory powers under Article 227 of the Constitution. Consequently, this petition fails and

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the same is hereby rejected summarily.

(B.H. Marlapalle, J.)